

STATE OF ARKANSAS
EXECUTIVE DEPARTMENT
PROCLAMATION

EO 98-04

TO ALL TO WHOM THESE PRESENTS COME — GREETINGS:

AN EXECUTIVE ORDER ESTABLISHING MANDATORY GUIDELINES AND PROCEDURES TO BE FOLLOWED BY THE EXECUTIVE DEPARTMENT IN AREAS OF EMPLOYMENT, GRANTS, CONTRACTS AND PURCHASING TO PREVENT WASTE, ABUSE OR THE APPEARANCE OF IMPROPRIETY AND TO CREATE A CLEARINGHOUSE FOR GRANTS AND CONTRACTS.

WHEREAS, the acts of a few have created an unfortunate but predictable deterioration of public confidence in public officials, the majority of whom serve loyally and at great personal sacrifice; and

WHEREAS, the taxpaying citizens of Arkansas annually entrust their state government with more than \$4.3 billion paid by them in the form of taxes; and

WHEREAS, the Arkansas Constitution provides, “All political power is inherent in the people and government is instituted for their protection, security and benefit;” and

WHEREAS, recent events have brought to light abuses in state government that have resulted in misappropriation and waste of the hard-earned money of the citizens of this great State; and

WHEREAS, the practice of hiring public officials or their family members has at times created an appearance of impropriety; and

WHEREAS, the letting of personal service or purchasing contracts and grants to businesses that benefit public officials or their family members has occurred without disclosure or scrutiny; and

WHEREAS, no clearinghouse exists for disclosure of whether individuals or entities are simultaneously obtaining duplicative grants from separate agencies for the same intended purpose; and

WHEREAS, appropriate executive action is necessary to ensure that the executive department of this State acts responsibly in its administration of the citizens’ money, protecting the people from waste and abuse so that the government is truly acting for “their protection, security and benefit;”

NOW, THEREFORE, I, Mike Huckabee, acting under the authority vested in me as Governor of this State of Arkansas, do hereby order:

I. DISCLOSURE REQUIREMENTS

Agencies shall require, as a condition of obtaining or renewing a contract, lease, purchase agreement, employment, or grant with any state agency, that any individual desiring to contract with, be employed by, or receive grant benefits from, any state agency shall disclose whether that person is a current or former: member of the general assembly, constitutional officer, board or commission member, state employee, or the spouse or immediate family member of any of the persons described in this sentence. Agencies shall require that any non-individual entity desiring to contract with, or receive grant benefits from, any state agency shall disclose (i) any position of control, or (ii) any ownership interest of 10% or greater, that is held by a current or former: member of the general assembly, constitutional officer, board or commission member, state employee, or the spouse or immediate family member of any of the persons described in this sentence.

II. APPROVAL OF CONTRACTS AND GRANTS

Agencies shall be prohibited from entering into or renewing any contract, lease, purchase agreement, or grant with any current or former: member of the general assembly, constitutional officer, board or commission member, state employee, or the spouse or immediate family member of any of the persons described in this sentence, or with any entity in which any such person holds (i) any position of control, or (ii) any ownership interest of 10% or greater.

The prohibition provided in the previous sentence shall not apply to:

- (i) contracts, leases, or purchase agreements that are the result of competitive sealed bidding, or a request for proposal, which requires public notice and public opening of bids or proposals; provided, however, agencies shall be required to disclose any such contract, lease, or purchase agreement entered into with any of the persons described in the previous paragraph, notice of which is given to the Governor and the Legislative Council; or
- (ii) contracts or purchase agreements subject to competitive bidding, for which the total consideration is less than \$10,000; provided, however, agencies shall be required to disclose any such contract, lease, or purchase agreement entered into with any of the persons described in the previous paragraph, notice of which is given to the Governor and the Legislative council; or
- (iii) any contract, lease, purchase agreement, or grant not subject to competitive sealed bidding or a request for proposal, for which the total consideration is \$10,000 or greater, and the prior written approval of the Chief Fiscal Officer of the State is obtained, notice of which approval is given to the Governor and the Legislative Council.

III. DISCLOSURE OF SUBCONTRACTORS

Agencies shall require, as a condition of obtaining or renewing a contract, lease, purchase agreement, or grant with any state agency, that any individual or entity desiring to contract with any state agency shall require that any subcontractor, sub-lessor, or other assignee (hereinafter "Third Party"), shall disclose whether such Third Party is a current or former: member of the general assembly, constitutional officer, board or commission member, state employee, or the spouse or immediate family member of any of the persons described in this sentence, or if any of the persons described in this sentence hold any position of control or any ownership interest of 10% or greater in the Third Party, and shall report any such disclosure by the Third Party to the agency. The disclosure requirements of this paragraph shall apply during the entire term of the contract, lease, purchase agreement, or grant, without regard to whether the subcontract, sublease, or other assignment is entered into prior or subsequent to the contract date.

Agencies shall require, as a further condition of obtaining or renewing any contract or agreement with any state agency, that the individual or entity desiring to contract shall incorporate into any agreement with a Third Party, previously defined, the language of Paragraphs XI of this order, and any other necessary language as provided by rules and regulations promulgated to enforce this order, which provides that failure of the third Party to disclose the identity of any person or entity described in the previous paragraph shall be considered a material breach of the agreement.

IV. REPORT OF BENEFITS RECEIVED

Department of Finance and Administration shall promulgate regulations to implement the requirements of Ark. Code Ann. § 19-11-706, which requires an individual drawing a salary from or performing personal services for an agency to report to the Director of Department of Finance and Administration any benefit from any State contract with a business in which the individual has a financial interest, and provides that failure to report

as required may subject the individual to criminal sanctions, as provided in Ark. Code Ann. § 19-11-702.

V. DISCLOSURE OF CONTRACTS AND GRANTS

Agencies shall disclose all (i) grants awarded to, and (ii) all goods and services sold or leased to them by, current or former members of the following: the general assembly, constitutional officers, board and commission members, state employees, the spouse and immediate family members of any of the persons described in this sentence, or business entities in which persons described in this sentence hold (i) any position of control, or (ii) any ownership interest of 10% or greater.

Department of Finance and Administration shall serve as a central clearinghouse for agency disclosure forms that shall be maintained in accordance with this executive order.

All such disclosure shall be compiled periodically from clearinghouse information and reported to the Governor, with notice to the Legislative Council.

VI. SOLE SOURCE CONTRACTS

Agencies shall review all “sole source” contract procedures to ensure compliance with the purpose and intent of this order.

VII. RESTRICTIONS ON EMPLOYMENT OF LEGISLATORS AND CONSTITUTIONAL OFFICERS

Agencies shall be prohibited from hiring any member of the general assembly or any constitutional officer while the member or officer is serving in his or her elected office. Agencies shall further be prohibited from hiring former members of the general assembly or former constitutional officers in any job created or enhanced by legislation in the two-year period immediately preceding the conclusion of that person’s term of office. Agencies shall provide notice of the hiring of any former legislator or former constitutional officer to the Chief Fiscal Officer of the State, the Governor, and the Legislative Council.

VIII. RESTRICTIONS ON EMPLOYMENT OF CERTAIN FAMILY MEMBERS

Agencies shall be prohibited from hiring spouses and immediate family members of the general assembly, constitutional officers, and state employees without the prior written approval of the Chief Fiscal Officer of the State, notice of which approval is given to the Governor and the Legislative Council.

IX. RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES

Agencies shall provide written notice to current and future employees of the restrictions of Ark. Code Ann. § 19-11-709, which prohibits present and former state employees from contracting with the state and representation before the state under certain conditions. Agencies shall report any known violation of Ark. Code Ann. § 19-11-709 to the Governor, with a copy of such report to Legislative Council.

X. PROMULGATION OF RULES AND REGULATIONS

The Department of Finance and Administration shall immediately proceed to promulgate and implement any necessary rules, regulations or policies to insure compliance with the purpose and intent of this executive order.

XI. FAILURE TO DISCLOSE AND VIOLATIONS

Every agreement executed by an Agency, whether a contract, lease, purchase agreement, or grant, shall be required to contain the following condition as a term of the agreement and shall be further required to provide that this condition shall be contained in

any subcontract, sublease, or other assignment of the terms of the agreement to any Third Party, as defined in Paragraph V:

The failure of any person or entity to disclose as required under any term of Executive Order 98-04, or the violation of any rule, regulation or policy promulgated by the Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose or in violation to all legal remedies available to the Agency under the provisions of existing law.

XII. AGENCIES AFFECTED

The provisions of this Order shall apply to entities that are within the control of the Governor.

Members of the Legislature, any employees of, or positions in the Legislative branch of Arkansas State Government; the Justices of the Supreme Court, Judges of the Court of Appeals, Judges of the Circuit, Chancery or Circuit/Chancery Courts, Judges of the Inferior Courts, or any employee of, or position in the Judicial branch of Arkansas State government; elective officers of the State and any employee of the offices of Lieutenant Governor, Attorney General, Secretary of State, State Auditor, Land Commissioner, and State Treasurer; members and staff of multi-member boards, commission, or committees that are exempt by law from the provisions of the "Arkansas Purchasing Law", Ark. Code Ann. § 19-11-201 et seq.; and employees of the Arkansas Highway and Transportation Department and the Arkansas Game and Fish Commission are encouraged to voluntarily agree to be covered by the provisions of this Executive Order.

XIII. DEFINITIONS

For purposes of the foregoing Executive Order, the following definitions shall apply:

(1.) MEMBERS OF THE GENERAL ASSEMBLY shall mean member(s) of the Arkansas House of Representatives or of the Arkansas Senate.

(2.) FORMER MEMBER OF THE GENERAL ASSEMBLY shall mean any person who was a member of the General Assembly within two years prior to entering into any contract with or receiving any grant awarded by a state agency.

(3.) CONSTITUTIONAL OFFICER shall mean Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Attorney General, Commission of State Lands, and Auditor of State.

(4.) FORMER CONSTITUTIONAL OFFICER shall mean any person who was a Constitutional Officer within two years prior to entering into any contract with or receiving any grant awarded by a state agency.

(5.) STATE AGENCY shall mean every agency, board, commission, department, division, institution, and other office of state government located within the executive branch of government and under the control of the governor, including state supported colleges and universities.

(6.) STATE EMPLOYEE shall mean any employee of any state agency.

(7.) FORMER STATE EMPLOYEE shall mean any person who was a state employee of any state agency within two years prior to entering into any contract with or receiving any grant awarded by a state agency.

(8.) FORMER BOARD OR COMMISSION MEMBER shall mean any person who was a board or commission member within two years prior to entering into any contract with or receiving any grant awarded by a state agency.

(9.) IMMEDIATE FAMILY MEMBER shall mean an individual’s spouse, children of that individual or his or her spouse, or brothers, sisters, or parents of the individual or his or her spouse.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Arkansas to be affixed at the Capitol in Little Rock on the 27th day of February in the Year of our Lord, nineteen hundred ninety-eight.



GOVERNOR MIKE HUCKABEE

SECRETARY OF STATE SHARON PRIEST